



ADMINISTRATION AND
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1950

April 4, 2012

**MEMORANDUM FOR COMMITTEE MANAGEMENT SECRETARIAT
GENERAL SERVICES ADMINISTRATION**

SUBJECT: Committee Charter and Membership Balance Plan Consultation – *Inland Waterways Users Board*

The Department of Defense, pursuant to the Federal Advisory Committee Act of 1972, as amended, intends to amend the charter for the Inland Waterways Users Board . The Board will operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act, and governing federal regulations.

This amendment incorporates recent decisions by the Department of Defense on the Board's membership designation. Specifically, the Department has determined that the Board membership will be representative members instead of special government employee members.

Prior to filing the Board's amended charter with the Library of Congress and the appropriate congressional committees the Department of Defense respectively requests that the Committee Management Secretariat review and approve the proposed charter and Membership Balance Plan (attached). The proposed charter and Membership Balance Plan has been reviewed and approved by the Office of the General Counsel for the Department of Defense.

If you should have any questions about this charter or the Membership Balance Plan please contact my point of contact me.

James D. Freeman II
Advisory Committee Management
Officer for the Department of Defense

2 Attachments

1. Proposed Amended Charter
2. Proposed Membership Balance Plan

CHARTER

INLAND WATERWAYS USERS BOARD

1. Committee's Official Designation: The Committee shall be known as the Inland Waterways Users Board (hereafter referred to as "the Board").
2. Authority: The Secretary of Defense, under the provision of 33 U.S.C. § 2251, the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR §102-3.50(a) (authorized by law), established the Board.
3. Objectives and Scope of Activities: The Board shall provide independent advice and recommendations on matters relating to the U.S. inland waterways and inland harbors, as set out in (4) below.
4. Description of Duties: The Board shall provide the Secretary of Defense, through the Secretary of the Army and the Assistant Secretary of the Army for Civil Works, independent advice and recommendations on matters relating to construction and rehabilitation priorities and spending levels on the commercial navigation features and components of the U.S. inland waterways and inland harbors as defined in Public Law 95-502 and amended by Public Law 99-662.

According to 33 U.S.C. § 2251b, the Board shall annually file their recommendations with the Secretary of the Army and with Congress; the Secretary of the Army, pursuant to DoD policy, may act upon the Board's advice and recommendations.

5. Agency or Official to Whom the Committee Reports: The Board shall report to the Secretary of Defense through the Secretary of the Army, the Assistant Secretary of the Army for Civil Works, and the U.S. Army Corps of Engineers.
6. Support: The Department of Defense, through the Department of the Army, shall provide support as deemed necessary for the Board's functions, and shall ensure compliance with the requirements of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b) (hereafter referred to as "the Sunshine Act"), and governing federal regulations and DoD policies.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating costs, to include travel costs and meeting and contract support, are approximately \$425,000. The estimated annual personnel cost to the Department of Defense is 2.8 full-time equivalents (FTEs).
8. Designated Federal Officer: The Board's Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures.

The Board's Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Board's Designated Federal Officer, an Alternate Designated Federal Officer, duly appointed according to DoD policies and procedures, shall attend the entire duration of the Board or subcommittee meetings.

The Designated Federal, or the Alternate Designated Federal Officer, shall call all of the Board's and authorized subcommittee's meetings; prepare and approve all meeting agendas; and adjourn any meeting, when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public's interest or required by governing regulations or DoD policies/procedures.

9. Estimated Number and Frequency of Meetings: Pursuant to 33 U.S.C. § 2251(b), the Board shall meet at least semi-annually.
10. Duration: The need for this advisory function is on a continuing basis; however, it is subject to renewal every two years.
11. Termination: Upon rescinding of 33 U.S.C. § 2251(b).
12. Membership and Designation: Board members, as determined by the Department of Defense, shall be representative members and, pursuant to 33 U.S.C. § 2251(a), the Board shall be composed of eleven members.

Based upon the Secretary of the Army's recommendation, the Secretary of Defense shall invite primary commercial users and shippers of the inland and intracoastal waterways to serve on the Board. Commercial users and shippers invited to serve on the Board shall designate an individual to represent the organization's interests.

The Department of Defense, when considering prospective users and shippers to be represented on the Board, shall ensure selections represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intracoastal waterways for commercial purposes. Due consideration shall be given to assure a balance among the members based on the ton-mile shipments of the various categories of commodities shipped on inland and intracoastal waterways.

A primary user or shipper may be represented on the Board, at the request of the Secretary of the Army and with the approval of the Secretary of Defense, for a two-year term of service with annual renewals. A user or shipper may be represented on the Board no more than two terms of service (four years); a user or shipper may be subsequently represented on the Board, but only after being off the Board for at least two years.

In addition to the primary users and shippers invited by the Secretary of Defense, the Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation and Commerce may each designate a representative to act as an observer of the Board. These observers, who have no voting rights, shall be full-time or permanent part-time employees of his or her respective agency.

Pursuant to 33 U.S.C. § 2251(a), the Secretary of the Army shall designate one Board member to serve as the Board's Chairperson. With the exception of travel and per diem for official travel, all Board members shall serve without compensation.

13. Subcommittees: With DoD approval and according to DoD policies and procedures, the Board, consistent with its mission, is authorized to establish subcommittees, task groups, or working groups to support the Board.

These subcommittees or working groups shall operate under the provisions of FACA, the Sunshine Act, and other governing Federal statutes and regulations, and governing DoD policies and procedures.

Such subcommittees or task groups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of two years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

With the exception of travel and per diem for official travel, subcommittee members shall serve without compensation.

14. Recordkeeping: The records of the Board and its subcommittees shall be handled according to section 2, General Record Schedule 26 and appropriate Department of Defense policies and procedures. These records shall be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. §552, as amended).

15. Filing Date: March 21, 2011

16. Amended:

Membership Balance Plan Inland Waterways Users Board

Agency: Department of Defense

- 1. Authority:** The Secretary of Defense, pursuant to 33 U.S.C. § 2251, the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR § 102-3.50(a) (authorized by law), established the Inland Waterways Users Board (hereafter referred to as “the Board”).
- 2. Mission/Function:** The Board, under the provisions of 33 U.S.C. § 2251 and FACA, shall provide independent advice and recommendations to the Secretary of Defense and the Department of the Army on matters relating to construction and rehabilitation priorities and spending levels on the commercial navigation features and components of the U.S. inland waterways and inland harbors as defined in Public Law 95-502 and amended by Public Law 99-662.
- 3. Points of View:**

The Department of Defense (DoD) has a long standing agreement with the Defense congressional oversight committees that DoD will refrain from using representative members on advisory committees established or supported by the Department. This policy is essentially codified in Department of Defense Instruction 5105.04, “Department of Defense Federal Advisory Committee Management Program”, dated August 6, 2007, and affirmed in each advisory committee’s charter.

In 2010 the Department of the Army, concerned about confusion over the Board’s member designation, asked the Secretary of Defense’s Director of Administration and Management (DA&M) to review the issue. The Office of the Advisory Committee Management Officer (ACMO) for the Department of Defense, on behalf of the DA&M, conducted a thorough review of the Board’s authorizing legislation; its operations; decisions by the Office of Government Ethics; and reports by the Government Accountability Office.

Based upon the ACMO’s review, the DA&M, in consultation with the Office of General Counsel (OGC) for the Department of Defense, determined that Congress, when it established the Board, intended for the Board’s membership to represent the interest of the member’s employer and other inland waterways users and shippers. Accordingly, the DA&M, on behalf of the Secretary of Defense, affirmed that the Board shall be composed of not more than 11 representative members instead of special government employee members and, that the Board member will represent the interests of his or her employer and the overall interests of the primary users and shippers of the U.S. inland and intracoastal waterways.

In accordance with the Board’s authorization, members will represent a balance of primary user and shippers on the inland and intra-coastal waterways, including at least one representative of each of the following: Upper Mississippi River; Lower Mississippi River Ohio River; Gulf Intra-coastal Waterway – West; Gulf Intra-coastal Waterway – East; and the Columbia-Snake River System. Balance also will be maintained between shippers and carriers, as well as among a range of commodities and a range of ton-miles of cargo moved on the waterways.

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In addition to the primary users and shippers invited by the Secretary of Defense, the Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation and Commerce may each designate a representative to act as an observer of the Board. These observers, who have no voting rights, shall be full-time or permanent part-time employees of his or her respective agency, and may participate in Board discussions when technical information on their respective agencies is requested by the Board.

4. Other Balance Factors: Not Applicable

5. Candidate Identification Process:

The Department of the Army, as part of its process for identifying potential candidates, carefully reviewed the feasibility of developing a rotational list for ensuring balance representation among the primary users and shippers, but came to the conclusion that user/shipper proprietary information and the sheer number of primary users/shippers made such an effort impractical. Instead the Army, with the support of the affected users/shippers, developed a process that best ensures balanced representation among the primary users and shippers. That process is:

- a) The Army announces Board vacancies through the Federal Register whereby organizations, companies or individuals can nominate companies (primary users/shippers) as potential Board members.
- b) The Army reviews the nominees and then uses a decision matrix to array each company and whether they meet one or more of the statutory membership requirements; the Army's decision matrix includes both the incumbent members and the potential nominees.
- c) The Army eliminates from consideration any company that does not meet at least one of the statutory membership requirements or those already represented on the Board.

Based upon the number of vacancies, the Department of the Army nominates those primary commercial users and shippers that provide a broad representation of commercial users and shippers, regions, commodities, and ton-miles of cargo moved on the waterways. Primary users and shippers may be represented on the Board for a two-year term of service, and no primary user or shipper can serve more than two terms of service (total of four years) without a break of at least two years.

Prior to the formal nomination, the list of potential organizations undergoes a review by the Department of Defense Office of General Counsel (DoD OGC) and the Office of the Advisory Committee Management Officer to ensure compliance with federal and DoD governance requirements. For example, compliance with the advisory committee's charter and the membership balance plan.

Following this review the Secretary of the Army formally nominates the potential organizations to the Secretary of Defense for approval; pursuant to DoD policy only the Secretary of Defense and the Deputy Secretary of Defense can invite or approve the appointment of individuals to advisory committees established or supported by the Department of Defense. After the Secretary of Defense's approval the Department of the Army notifies the invited organizations, and each organization then designates who will represent the organization's interests on the Board. Should a sufficient number of

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vacancies occur to significantly change the Board's balance or impede its ability to perform its duties, an early selection process may be initiated in accordance with procedures for selection of representatives.

- 6. Subcommittee Balance:** Upon DoD approval and according to DoD policies/procedures the Board may establish subcommittees, as necessary and consistent with its mission. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the advisory committee's sponsor.

The Secretary of Defense or the Deputy Secretary of Defense shall approve the selection of representatives to subcommittees in the same manner that representatives to the Board are selected, and these individuals may come from the parent committee or new nominees, as recommended by the advisory committee's sponsor and based upon the matters under consideration.

As required by the Board's charter, these subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

- 7. Other:** The Department of Defense adheres to the rules and regulations issued by the Office of Government Ethics and the administration's prohibition against registered federal lobbyists.

- 8. Date Prepared:**